IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5267 OF 1994

Jagmohan Banodas Mishra ..Petitioner.

Vs.

Smt. Shahidan w/o Yusuf & Ors. ..Respondents.

...

Mr. G.S. Bhat for the Petitioner.
Mr. K.K. Malpathak for Respondent Nos.1, 2, 4 and 5.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

26th June, 2006.

P.C. :

1. The landlord's suit for eviction has been decreed upon the finding of the Additional District Judge, Thane in appeal, that there was a default in the payment of rent. The decree has been passed under Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Since the suit was instituted in 1986 prior to the amendment of Section 12, the provisions as they then stood prior to the amendment would govern the case.

2. A notice of demand was issued by the landlord on 2nd September, 1985 demanding the arrears of rent from October

1982. The agreed rent was Rs.30/- per month. The defence of the tenant was that he had instituted Suit 631 of 1983 seeking an injunction restraining the landlord from evicting him from the premises otherwise than with due process of law and that he had regularly deposited the monthly rent in the proceedings in the suit. The Additional District Judge has in the course of the judgment observed in paragraph 13 that all the receipts had been duly perused by the Court. The receipts dated 12th April, 1984, 18th September, 1984, 12th February, 1985 and 13th August, 1985 cover a period of 25 months and a total rental payment of Rs.750/- which was deposited in the Court. On the date of the notice of demand that was issued by the landlord, i.e. 2nd September, 1985, the default covered the arrears of rent, in respect of which the demand was raised, for a period of 35 months from October 1982 to August, 1985. Therefore, admittedly there was an outstanding period of arrears of 10 months. In order to protect himself against a decree for eviction, the tenant had to either deposit the amount within a period of 30 days of the receipt of the notice or where the standard rent was disputed to file an application for fixation of the standard rent. In paragraph 2 of the plaint there was a pleading to the effect that the rent of the suit premises was Rs.30/- and it must be the standard rent. This was not denied in the corresponding

paragraphs of the written statement. Hence, the Additional District Judge was justified in holding that in the absence of any dispute in regard to the standard rent, the tenant was required to meet the demand for arrears in respect of the undisputed period of ten months which was in arrears. The tenant did not effect payment of the rent for the said period of ten months. The decree for eviction under Section 12(3)(a) was required to be passed. It may be noted that the finding of the Additional District Judge in paragraph 13 of the impugned judgment to the effect that the deposits in the earlier suit instituted by the tenant cover 25 months amounting to Rs.750/- has not been challenged in the writ petition. This has also not been disputed by counsel appearing for the Petitioner.

3. In the circumstance, there is no merit in the Petition. The Petition is accordingly dismissed. However, time to vacate the premises is granted to the Petitioner until 30th September, 2006, subject to the filing of the usual undertaking within a period of one week from today of all the adult members.

R & P be sent back.